

Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES

Chapter 511: PROTECTION AND ADVOCACY FOR PERSONS WITH DISABILITIES

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Maine Revised Statutes
Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES
Chapter 511: PROTECTION AND ADVOCACY
FOR PERSONS WITH DISABILITIES

§19501. POLICY

It is the policy of the State to ensure that the legal and human rights of all persons with disabilities residing in the State are protected through the establishment of a protection and advocacy system pursuant to 29 United States Code, Section 794(e), 42 United States Code, Section 6042 et seq., as recodified, and Section 10801 et seq. [2001, c. 357, §2 (AMD).]

SECTION HISTORY

1989, c. 837, §1 (NEW). 2001, c. 357, §2 (AMD).

§19502. DESIGNATION

The Governor shall designate an agency, independent of any state or private agency that provides treatment, services or habilitation to persons with disabilities, to serve as the protection and advocacy agency for persons with disabilities. [2001, c. 357, §3 (AMD).]

SECTION HISTORY

1989, c. 837, §1 (NEW). 2001, c. 357, §3 (AMD).

§19503. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 837, §1 (NEW).]

1. Abuse. "Abuse" means the act or failure to act, knowingly, recklessly or intentionally, that causes, or may cause, injury or death. "Abuse" includes, but is not limited to, rape or sexual assault, the striking of an individual, the use of excessive force in the use of bodily restraints, the use of bodily or chemical restraints in a manner that is not in compliance with federal and state laws, regulations and rules and verbal, nonverbal, mental and emotional harassment.

[2001, c. 357, §4 (AMD) .]

2. Agency. "Agency" means the protection and advocacy agency for persons with disabilities, designated by the Governor.

[1989, c. 837, §1 (NEW) .]

2-A. Complaint. "Complaint" means, but is not limited to, any report or communication, formal or informal, written or oral, including media accounts and telephone calls from any source, including anonymous calls, alleging abuse or neglect of a person with a disability.

[2001, c. 357, §5 (NEW) .]

3. Developmental disability. "Developmental disability" means a disability attributable to a mental or physical impairment or combination of mental and physical impairments that:

A. Is manifested before the person reaches 22 years of age; [1989, c. 837, §1 (NEW) .]

B. Is likely to continue indefinitely; [1989, c. 837, §1 (NEW).]

C. Results in substantial functional limitations in 3 or more of the following areas of major life activity:

- (1) Self care;
- (2) Receptive and expressive language;
- (3) Learning;
- (4) Mobility;
- (5) Self direction;
- (6) Capacity for independent living; and
- (7) Economic self-sufficiency.

A person from birth through 9 years of age who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting 3 of the criteria stated in this subsection if there is a high probability that the person will meet those criteria later in life if services and supports are not provided to the person; and [2001, c. 1, §13 (COR).]

D. Reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services that are of a lifelong or extended duration and are individually planned and coordinated. [1989, c. 837, §1 (NEW).]

[2001, c. 1, §13 (COR) .]

4. Exploitation. "Exploitation" means the illegal or improper use of an individual or the individual's resources for another's profit or advantage.

[1989, c. 837, §1 (NEW) .]

5. Facility. "Facility" means any foster home; boarding home; nursing home; group home; hospital; state mental health institute; state-operated psychiatric treatment facility; state, county or municipal correctional or detention facility; shelter; or any other facility licensed or funded by the State, or any subdivision of the State, for the provision of services, supports and other assistance or residential services or treatment. "Facility" includes any facility providing services, supports and other assistance or residential services or treatment that operates without a license that is required by law, ordinance or rule.

[2001, c. 357, §7 (RPR) .]

6. Learning disability. "Learning disability" means a disorder exhibited in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations.

[1989, c. 837, §1 (NEW) .]

7. Mental illness. "Mental illness" means a significant mental illness or emotional impairment, as determined by a qualified mental health professional.

[1989, c. 837, §1 (NEW) .]

8. Neglect. "Neglect" means a negligent act or omission that causes or may cause an individual's injury or death or that places an individual at risk of injury or death. "Neglect" includes, but is not limited to, failure to establish or carry out an individual program, treatment or habilitation plan or the deprivation of or failure to meet essential needs, including needs for adequate nutrition, clothing, health care and a safe environment.

[1989, c. 837, §1 (NEW) .]

9. Personnel. "Personnel" means staff employed by the agency.

[2001, c. 357, §8 (AMD) .]

10. Person with a disability. "Person with a disability" means a person with a physical or mental impairment that substantially limits one or more of the major life activities of that person and includes, but is not limited to, a person with a developmental disability, a learning disability or a mental illness.

[2001, c. 357, §9 (RPR) .]

11. Probable cause. "Probable cause" means a reasonable ground for belief that a person with a disability has been or may be subject to abuse or neglect. The belief may be based on reasonable inferences drawn from experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect.

[2001, c. 357, §10 (NEW) .]

SECTION HISTORY

1989, c. 837, §1 (NEW). RR 2001, c. 1, §13 (COR). 2001, c. 357, §§4-10 (AMD) .

§19504. ORGANIZATION

The protection and advocacy agency for persons with disabilities, designated by the Governor, must meet the following requirements. [1989, c. 837, §1 (NEW) .]

1. Governing authority. The agency is governed by an authority established in accordance with the following.

A. Members must be selected in accordance with the agency's policies and procedures. [1989, c. 837, §1 (NEW) .]

B. By October 1, 1990, membership must include the chair of the advisory council, described in subsection 2, and other individuals who represent or who are knowledgeable about the needs of the clients served by the agency. [1989, c. 837, §1 (NEW) .]

C. The governing authority is responsible for the planning, design, establishment of priorities and implementation and functioning of the agency, subject to the provisions of subsection 2. [1989, c. 837, §1 (NEW) .]

[1989, c. 837, §1 (NEW) .]

2. Advisory council. The agency shall establish an advisory council with the following membership and duties.

A. The advisory council shall advise the agency on policies and priorities to be followed in carrying out the duties of the agency as the protection and advocacy agency for individuals with mental illness. [2001, c. 357, §11 (AMD) .]

B. Members of the advisory council must include attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness and the advocacy needs of persons with mental illness and who have demonstrated a substantial commitment to improving mental health services, a provider of mental health services, individuals who have received or who are receiving mental

health services and family members of those individuals. At least 60% of the membership must consist of individuals who have received or who are receiving mental health services and family members of those individuals. [2001, c. 357, §11 (AMD).]

[2001, c. 357, §11 (AMD) .]

SECTION HISTORY

1989, c. 837, §1 (NEW). 2001, c. 357, §11 (AMD).

§19505. POWERS AND DUTIES OF THE AGENCY

The agency has the following powers and duties. [1989, c. 837, §1 (NEW) .]

1. Information and referral. The agency may provide information on and referral to programs and services addressing the needs of persons with disabilities.

[1989, c. 837, §1 (NEW) .]

2. Advice. The agency may advise and educate individuals on the rights of persons with disabilities and otherwise support and assist those persons in the protection of and advocacy for those rights.

[1989, c. 837, §1 (NEW) .]

3. Pursuit of remedies. The agency may pursue administrative, legal and other appropriate remedies on behalf of persons with disabilities.

[1989, c. 837, §1 (NEW) .]

4. Investigation. The agency may investigate allegations of abuse, exploitation or neglect of persons with disabilities. The agency may initiate an investigation upon receipt of a report that an incident of abuse, exploitation or neglect has occurred or is occurring. The agency may also initiate an investigation on its own initiative when it has probable cause to believe that abuse, exploitation or neglect has occurred or is occurring.

[1989, c. 837, §1 (NEW) .]

5. Report. The agency shall prepare an annual report for submission to the Governor, the Legislature, the Commissioner of Health and Human Services and the Secretary of the United States Department of Health and Human Services. The report must describe the activities, accomplishments and expenditures of the agency during the most recently completed fiscal year.

[1995, c. 2, §16 (COR); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §7 (REV) .]

6. Goals and priorities. The agency shall represent persons with disabilities and otherwise conduct its activities in accordance with goals and priorities annually established by the agency, with other requirements of applicable federal law and with the terms of any grants or contracts. The agency shall provide the public with an opportunity to comment upon the agency's goals and priorities.

[2001, c. 357, §12 (NEW) .]

7. Monitoring. The agency may monitor the delivery of services, supports and other assistance or residential services or treatment provided to persons with disabilities for the purpose of ensuring that services, supports and assistance meet the needs of those persons and are delivered in conformity with laws, regulations, rules and other standards regarding quality of care.

[2001, c. 357, §12 (NEW) .]

SECTION HISTORY

1989, c. 837, §1 (NEW). RR 1995, c. 2, §16 (COR). 2001, c. 354, §3 (AMD). 2001, c. 357, §12 (AMD). 2003, c. 689, §B7 (REV).

§19506. AGENCY ACCESS TO RECORDS, FACILITIES, PERSONS WITH DISABILITIES AND REPORTS

For the purposes of this chapter, agency personnel in the performance of duties pursuant to section 19505 must be granted access to records, facilities, persons with disabilities and reports as follows. [1989, c. 837, §1 (NEW) .]

1. Records. Agency personnel must be granted access to all records, reports and supporting information, other than records, reports and supporting information created in the course of an ongoing criminal investigation by the Attorney General, a district attorney's office or a law enforcement agency or records, reports and supporting information designated as confidential by Title 16, section 804, that:

A. Pertain to a person who is a client of the agency, if the person or the person's legal guardian or other legal representative has authorized the agency to have that access; [1989, c. 837, §1 (NEW) .]

B. [2001, c. 357, §13 (RP) .]

C. Describe incidents of abuse, exploitation, neglect or injury, and the steps taken to investigate those incidents, prepared by any staff person of any facility serving persons with disabilities or by any agency charged with investigating allegations of abuse, exploitation, neglect and injury occurring at facilities that serve persons with disabilities; or [2001, c. 357, §13 (AMD) .]

D. Pertain to an individual who is or was a person with a disability and who is the subject of a complaint received by the agency or who, as a result of monitoring or other activities resulting from a complaint or other evidence, the agency has probable cause to believe has been or is being abused, exploited or neglected and who:

(1) By reason of a mental or physical condition is unable to authorize the agency to have access and is either under public guardianship or without a legal guardian or other representative who may authorize the agency to have access;

(2) Has a legal guardian, conservator or other legal representative who has been contacted by the agency upon receipt of the name and address of the guardian, conservator or representative, and the agency has offered assistance to that person to resolve the situation, and that person has failed or refused to act on behalf of the individual; or

(3) Is deceased or whose whereabouts are unknown. [2001, c. 357, §13 (NEW) .]

Agency personnel must be given access to the records of a person with a disability and other records relevant to conducting an investigation within 3 business days of the agency making a written request. When the agency determines there is probable cause to believe that the health or safety of the person is in serious or immediate jeopardy or in event of the death of a person with a disability, the agency must be given access to records within 24 hours of the agency making a written request.

[2013, c. 267, Pt. B, §2 (AMD) .]

2. Persons with disabilities. Any department, agency, board, commission or office of the State or of any subdivision of the State, and any private agency or individual licensed or funded by the Federal Government or the State or any subdivision of the State that operates or administers any program or facility providing services to persons with disabilities shall permit agency personnel performing duties pursuant to section 19505 to meet with those persons. The program or facility must allow agency personnel to communicate privately with the persons with disabilities.

[1989, c. 837, §1 (NEW) .]

3. Facilities. Any facility that serves a person with a disability shall permit access to the premises of the facility by agency personnel performing duties pursuant to section 19505.

A. Access to the premises must include reasonable unaccompanied access to all residents of the facility at reasonable times, including normal working and visiting hours, for the following purposes:

(1) Providing information and training on and referral to programs addressing the needs of a person with a disability and information about the rights of a person with a disability and the protection and advocacy services of the agency, including the name, address and telephone number of the agency; and

(2) Monitoring the rights and safety of recipients of services from the facility. [2001, c. 357, §14 (NEW) .]

B. If the agency is conducting an investigation of a complaint of abuse, neglect or exploitation, access to the premises must include:

(1) The opportunity to interview any recipient of services from the facility, facility employee or other person, including the person suspected to be the victim of abuse, neglect or exploitation, who the agency reasonably believes may have knowledge of the incident under investigation; and

(2) The opportunity to view, inspect and photograph all areas of the facility's premises that the agency reasonably believes may be connected to the incident under investigation. [2001, c. 357, §14 (NEW) .]

[2001, c. 357, §14 (AMD) .]

4. Reports. The agency must be provided copies of each annual survey report and plan of corrections for cited deficiencies made pursuant to Title 22, chapter 405 and pursuant to 42 United States Code, Sections 1395 et seq. and 1396 et seq. with respect to any facility serving persons with disabilities within the State. The reports and plans must be provided to the agency within 30 days of completion.

[1989, c. 837, §1 (NEW) .]

SECTION HISTORY

1989, c. 837, §1 (NEW). 2001, c. 357, §§13,14 (AMD). 2013, c. 267, Pt. B, §2 (AMD).

§19507. CONFIDENTIALITY OF INFORMATION; REPRESENTATION OF INDIVIDUALS WITH DISABILITIES

1. Disclosure of nonidentifiable information. Authorized agency personnel, in the performance of their duties under section 19505, may disclose information, materials and records that do not contain personally identifiable data.

[1989, c. 837, §1 (NEW) .]

2. Disclosure to subject. Disclosure of information to a person with mental illness who is the subject of records is subject to this section.

A. Authorized agency personnel may disclose information from the records obtained pursuant to section 19506 to a mentally ill individual who is the subject of the records, except when a mental health professional associated with the organization providing the records, who is responsible for supervising the provision of the mental health services to the individual, notifies the agency in writing that, based on the professional's determination, disclosure would be detrimental to the health of the subject individual. [1989, c. 837, §1 (NEW).]

B. Upon receipt of written notification pursuant to paragraph A, the agency may not disclose information from the records to the subject individual unless another mental health professional has reviewed the records and, based upon the professional's judgment following review, determines that disclosure would not be detrimental to the health of the individual. The reviewing mental health professional must be selected by:

- (1) The individual;
- (2) The individual's guardian or other legal representative; or
- (3) The agency, acting on behalf of an individual whose guardian is the State or an individual whose guardian or other legal representative is not the State, has not selected, within a reasonable time after receipt of notice pursuant to paragraph A, a mental health professional to review the records. [1989, c. 837, §1 (NEW).]

[1989, c. 837, §1 (NEW) .]

3. Disclosure of identifiable information and representation. Agency personnel may represent persons with disabilities or disclose information, materials and records containing personally identifiable information when one of the following occurs.

A. The person gives consent. [1989, c. 837, §1 (NEW).]

B. The person has been judged incompetent or is a minor, and the individual's guardian or other legal representative gives consent. [1989, c. 837, §1 (NEW).]

C. The person, by reason of a mental or physical condition, is unable to give consent and is without a legal guardian or other representative who may consent on behalf of the individual. [1989, c. 837, §1 (NEW).]

D. The person is under public guardianship and the agency proceeds according to the provisions of subsection 4. [1989, c. 837, §1 (NEW).]

E. The surrogate parent of a developmentally disabled or learning disabled minor authorizes the agency to represent the person in, or to disclose information regarding, special education matters governed by Title 20-A, chapter 303, subchapter I, or 20 United States Code, Sections 1401 to 1485. [1989, c. 837, §1 (NEW).]

F. The person has a legal guardian, conservator or other legal representative and:

- (1) The legal guardian, conservator or legal representative has been contacted by the agency upon receipt of the name and address of the legal guardian, conservator or legal representative;
- (2) The agency has offered assistance to the legal guardian, conservator or legal representative to resolve the situation; and
- (3) The legal guardian, conservator or legal representative has failed or refused to act on behalf of the person. [2001, c. 357, §15 (NEW).]

G. The person is deceased or the person's whereabouts are unknown. [2001, c. 357, §15 (NEW).]

[2001, c. 357, §15 (AMD) .]

4. Public guardians. Before the agency represents or discloses personally identifiable information pertaining to a person with a disability who is under public guardianship, the agency and the public guardian shall adhere to the following procedures.

A. The agency shall give the public guardian written notice of its intent to represent or disclose personally identifiable information pertaining to a person with a disability who is under public guardianship. [1989, c. 837, §1 (NEW).]

B. After giving notice pursuant to paragraph A, the agency may represent the person or disclose the information unless, within 5 working days, the public guardian gives to the agency written notice of its objections. [1989, c. 837, §1 (NEW).]

C. The objections of the public guardian to the agency's representation or disclosure may only be based upon the public guardian's belief that the actions of the agency would be detrimental to the person's interests. The written notice must state the public guardian's basis for that belief and the case name, docket number and court that established the public guardianship. [1989, c. 837, §1 (NEW).]

D. If the public guardian established under Title 18-A, article V, objects under paragraph B, the agency may petition the Probate Court that established the guardianship for permission to represent the person. [1989, c. 837, §1 (NEW).]

E. If the person is a child for whom the Department of Health and Human Services has been granted custody under Title 22, section 4034, 4035 or 4038, the agency may petition the court that granted custody for permission to represent the child. The agency must provide notice of the petition to the department at the same time the petition is filed with the court but need not provide notice to other parties to the original protective proceeding. The petition must be granted unless the Department of Health and Human Services demonstrates that representation by the agency would be detrimental to the child's interest. The court shall issue an order approving or denying the petition within 10 days of the filing of the petition. [1989, c. 837, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

F. In cases of emergency requiring immediate agency representation in judicial or administrative proceedings, the agency need not await the public guardian's response to its notice of intent to represent. In these instances the public guardian may raise objections in the proceedings in which the agency represents the person with disabilities. [1989, c. 837, §1 (NEW).]

G. The agency and state agencies acting as public guardians shall, within 6 months of April 17, 1990, enter into cooperative agreements, in writing, describing how this subsection will be implemented. [1997, c. 2, §24 (COR).]

[1997, c. 2, §24 (COR); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY

1989, c. 837, §1 (NEW). RR 1997, c. 2, §24 (COR). 2001, c. 357, §15 (AMD). 2003, c. 689, §B6 (REV).

§19508. APPLICATION TO RESIDENTS IN CHILDREN'S HOMES

This chapter also applies to children with disabilities in children's homes, emergency children's shelters, family foster homes, specialized children's homes and children's residential care facilities, as defined in Title 22, section 8101, and to other residential educational facilities, including the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf and other similar facilities. [2013, c. 179, §1 (AMD).]

SECTION HISTORY

1989, c. 837, §1 (NEW). 2005, c. 279, §4 (AMD). 2005, c. 662, §A3 (AMD). 2013, c. 179, §1 (AMD).

§19509. NOTICE OF DEATH OR INJURY

Notwithstanding any provision of law to the contrary, the following provisions apply to psychiatric hospitals, hospital units that are equipped to provide inpatient care and treatment for persons with mental illness, state mental health institutes and state-operated psychiatric treatment facilities. Notice provided under this section must be provided within 7 days of the date of the death, attempted suicide or the incident causing a serious injury resulting in significant impairment of physical condition. Notice provided under this section must include the name of the person with a disability; the name, address and telephone number of that person's legal guardian, conservator or legal representative and parent if that person is a minor; a detailed description of the occurrence and any injuries sustained; the name, street address and telephone number of the facility; and the name and job title of the person providing the notice. [2001, c. 471, Pt. D, §8 (AMD); 2001, c. 471, Pt. D, §10 (AFF).]

1. Psychiatric hospitals; hospital units. A psychiatric hospital or a hospital unit that is equipped to provide inpatient care and treatment for persons with mental illness shall provide the agency with access to information relating to the death of any person with a disability who died while in the psychiatric hospital or hospital unit in seclusion or restraint, whose death occurred within 24 hours of being in seclusion or restraint in the psychiatric hospital or hospital unit or when it is reasonable to conclude that the death is a result of having been in seclusion or restraint in the psychiatric hospital or hospital unit.

[2001, c. 471, Pt. D, §9 (AMD); 2001, c. 471, Pt. D, §10 (AFF) .]

2. State mental health institutes; state-operated psychiatric treatment facilities. A state mental health institute or state-operated psychiatric treatment facility shall notify the agency and provide access to information relating to a person with a disability if that person, while in the hospital, has died, attempted suicide or sustained a serious injury resulting in significant impairment of physical condition. For the purposes of this subsection, significant impairment includes serious injuries resulting from burns, lacerations, bone fractures, substantial hematoma and injuries to internal organs whether self-inflicted or inflicted by another person.

[2001, c. 357, §16 (NEW) .]

3. Department. The Department of Health and Human Services shall, within 3 days of receipt, forward to the agency all notices received pursuant to Title 34-B, section 3861, subsection 1, paragraph E.

[2007, c. 89, §1 (NEW) .]

SECTION HISTORY

2001, c. 357, §16 (NEW). 2001, c. 471, §§D8,9 (AMD). 2001, c. 471, §D10 (AFF). 2007, c. 89, §1 (AMD).

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